

REISSUE PATENT APPLICATION

Docket No. 06005/34687A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of:
Krivoshein et al.

U.S. Patent No. 5,980,078

Issued: November 9, 1999

For: PROCESS CONTROL
SYSTEM INCLUDING
AUTOMATIC SENSING AND
AUTOMATIC
CONFIGURATION OF
DEVICES

Filed: Herewith

Group Art Unit: Unknown

Examiner: Unknown

) "EXPRESS MAIL" mailing label No.
EL564457123US
)
I hereby certify that this paper and all
documents referred to therein as being
enclosed are being deposited with the
United States Postal Service "EXPRESS
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to: Commissioner for Patents,
Washington, D.C. 20231 on this date:

Date: November 9, 2001


Richard Zimmermann

**POWER OF ATTORNEY AND
REVOCATION OF PRIOR POWERS**

Commissioner for Patents
Washington, D.C. 20231

Sir:

Fisher-Rosemount Systems, Inc., the assignee of record of the entire right, title
and interest in and to U.S. Patent No. 5,980,078, issued November 9, 1999, pursuant to an
assignment recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel
8488, Frame 0037, hereby revokes all previous powers of attorney and appoints the following
attorneys to transact all business concerning U.S. Patent No. 5,980,078 and to prosecute the
referenced accompanying application for reissue thereof:

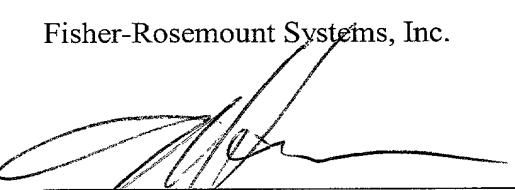
The following attorneys are hereby appointed to prosecute and transact all business in the Patent and Trademark Office connected herewith: John B. Lungmus (18,566), Allen H. Gerstein (22,218), Nate F. Scarpelli (22,320), Michael F. Borun (25,447), Carl E. Moore, Jr. (26,487), Richard H. Anderson (26,526), Patrick D. Ertel (26,877), James P. Zeller (28,491), Kevin D. Hogg (31,839), Jeffrey S. Sharp (31,879), Martin J. Hirsch (32,237), Richard M. La Barge (32,254), Richard B. Hoffman (26,910), James J. Napoli (32,361), Anthony G. Sitko (36,278), Robert M. Gerstein (34,824), James A. Flight (37,622), Roger A. Heppermann (37,641), David A. Gass (38,153), Gregory C. Mayer (38,238), Michael R. Weiner (38,359), and William K. Merkel (40,725), Marshall, Gerstein & Borun at 6300 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606-6402, and Michael L. Sheldon (32,001), Dale A. Kubly (27,569), and Alan L. Carlson (40,939).

I have reviewed the Assignment documents, and to the best of assignee's knowledge and belief, title is in the assignee seeking to take action.

Send correspondence and direct telephone calls to: Roger A. Heppermann, Registration No. 37,641, Marshall, Gerstein & Borun, 6300 Sears Tower, 233 South Wacker Drive, Chicago, Illinois 60606-6402, telephone number (312) 474-6300.

Fisher-Rosemount Systems, Inc.

By:


Michael L. Sheldon
Assistant Secretary

Date: 11/08/01

REISSUE PATENT APPLICATION
Docket No. 06005/34687A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of:) "EXPRESS MAIL" mailing label No.
Krivoshein et al.) **EL564457123US**
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U.S. Patent No. 5,980,078) I hereby certify that this paper and all
) documents referred to therein as being
Issued: November 9, 1999) enclosed are being deposited with the United
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For: PROCESS CONTROL) POST OFFICE TO ADDRESSEE" service
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 SYSTEM INCLUDING) Commissioner for Patents, Washington, D.C.
 AUTOMATIC SENSING AND) 20231 on this date:
 AUTOMATIC)
 CONFIGURATION OF)
 DEVICES)
) Date: November 9, 2001
 Filed: Herewith)
)
 Group Art Unit: Unknown)
)
 Examiner: Unknown)
)



Richard Zimmermann

**ASSIGNEE'S CONSENT TO REISSUE FILING UNDER 37 CFR § 1.172(a)
AND OFFER TO SURRENDER ORIGINAL PATENT UNDER 37 CFR § 1.178**

Commissioner for Patents
Washington, D.C. 20231

Sir:

Fisher-Rosemount Systems, Inc, a corporation of the State of Delaware having its principal place of business in Austin, Texas, declares the following upon information and belief of its Assistant Secretary, Michael L. Sheldon:

1. Fisher-Rosemount Systems, Inc. is the assignee and owner of the entire right, title and interest in and to U.S. Patent No. 5,980,078 (hereinafter "the '078 patent") for PROCESS CONTROL SYSTEM INCLUDING AUTOMATIC SENSING AND

AUTOMATIC CONFIGURATION OF DEVICES, the assignment being recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel 8488, Frame 0037.

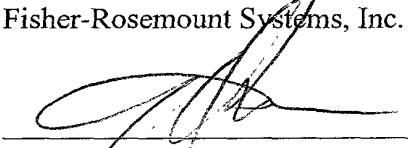
2. Fisher-Rosemount Systems, Inc. believes Ken D. Krivoshein, and Dan D. Christensen are the inventors of the invention described and claimed in U.S. Patent No. 5,980,078 and in the referenced accompanying reissue application.

3. Fisher-Rosemount Systems, Inc., as assignee of the entire right, title and interest in and to U.S. Patent No. 5,980,078, consents to the filing of the referenced accompanying reissue application seeking the reissue of this patent.

4. Fisher-Rosemount Systems, Inc. further offers to surrender the original patent upon reaching agreement as to the allowance of the referenced accompanying reissue application. Thus, the original patent is not being submitted with accompanying reissue application. Its surrender, however, is hereby proffered, and it will be forwarded to the Patent and Trademark Office upon being informed that the reissue application is in condition for allowance.

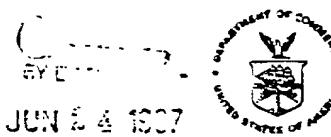
5. Fisher-Rosemount Systems, Inc. further declares that all statements made herein on the knowledge of the undersigned are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the referenced accompanying reissue application or any reissue patent granted thereon.

Fisher-Rosemount Systems, Inc.

By: 

Michael L. Sheldon
Assistant Secretary

Date: 11/08/01



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

4-4029-1PUS

JUNE 17, 1997

PTAS

SKJERVEN, MORRILL, MACPHERSON, ET AL.
KEN J. KOESTNER
25 METRO DRIVE, SUITE 700
SAN JOSE, CA 95110



100412461A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, NORTH TOWER BUILDING, SUITE 10C35, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/14/1997

REEL/FRAME: 8488/0037
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
KRIVOSHEIN, KEN D.

DOC DATE: 02/14/1997

ASSIGNOR:
CHRISTENSEN, DAN D.

DOC DATE: 02/14/1997

ASSIGNEE:
FISHER-ROSEMOUNT SYSTEMS, INC.
8301 CAMERON ROAD
AUSTIN, TEXAS 78754

SERIAL NUMBER: 08799966
PATENT NUMBER:

FILING DATE: 02/14/1997
ISSUE DATE:

MAURICE CARTER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

Added SMT/KK
Assignee Status
2-14-97
Form 1.17, 1.18
MPC DATE 0-24-97

ATTORN.

OCKET NO.: M-4029-1P US

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark

MRD 9-14-97

05-08-1997

To the Honorable Commissioner of Patents and Trademarks. Please

Name of conveying party(ies):

Ken D. Krivoshein and Dan D. Christensen



Additional name(s) of conveying party(ies) attached?

 Yes No

3. Nature of Conveyance:

 Assignment Merger Security Agreement Change of Name Other _____

Execution Date: February 14, 1997

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: February 14, 1997

A. Patent Application No.(s)

Title: "PROCESS CONTROL SYSTEM INCLUDING
CONFIGURATION OF DEVICES"

Inventors: Ken D. Krivoshein and Dan D. Christensen

B. Patent No.(s)

Additional numbers attached? Yes No5. Name and address of party to whom correspondence
concerning document should be mailed:Name Ken J. KoesmerInternal Address: SKJERVEN, MORRILL, MacPHERSONFRANKLIN & FRIELStreet Address: 25 METRO DRIVE, SUITE 700City SAN JOSE State CA ZIP 951106. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41): ... \$ 40.00 Authorized to be charged to Deposit Account 19-2386 Charge Deposit Account 19-2386 for any additional fees
required for this conveyance and credit deposit account
19-2386 any amounts overpaid

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8. Statement and signature

DE70045 03/19/97 08799966 19-2386 070 581 40.00CH
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.Ken J. Koesmer
Name of Person Signing
Reg. No. 33,004Ken J. Koesmer

Signature

Feb. 14, 1997

Date

Total number of pages comprising cover sheet: 1

ATTORNEY DOCKET NO.: M-4029-1P US

72469 U.S. PTO

08/799966

02/14/97

ASSIGNMENT

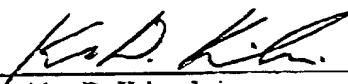
For good and valuable consideration, receipt of which is hereby acknowledged, we

Ken D. Krivoshein of Elgin, Texas
Dan D. Christensen of Austin, Texas

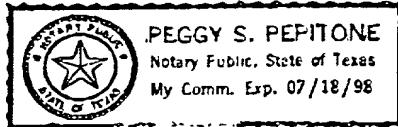
hereby sell, assign and transfer to Fisher-Rosemount Systems, Inc., a Delaware corporation, having a place of business at 8301 Cameron Road, Austin, Texas 78754, its successors and assigns, the entire right, title and interest throughout the world in our invention in

PROCESS CONTROL SYSTEM INCLUDING AUTOMATIC SENSING
AND AUTOMATIC CONFIGURATION OF DEVICES

for which we have executed a United States patent application on or about the date of this assignment, and all patent applications and patents of every country for said invention, including divisions, reissues, continuations and extensions thereof, and all rights of priority resulting from the filing of said applications; we authorize the above-named assignee to apply for patents of foreign countries for said invention, and to claim all rights of priority without further authorization from us; we agree to execute all papers useful in connection with said United States and foreign applications, and generally to do everything possible to aid said assignee, their successors, assigns and nominees, at their request and expense, in obtaining and enforcing patents for said invention in all countries; and we request the Commissioner of Patents and Trademarks to issue all patents granted for said invention to the above-named assignee, its successors and assigns.

Executed this 14 day of February, 1997

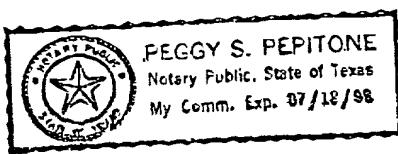
Ken D. Krivoshein

State of Texas)
)
County of Travis)
) ss..On 2/14/97 before me, Peggy S. Pepitone personally appeared Ken D. Krivoshein personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrumentWITNESS my hand and official seal

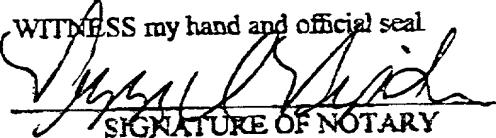
SIGNATURE OF NOTARY

Executed this 14 day of February 1997.
Dan D. ChristensenState of Texas)
) ss..
County of Travis)

On 2/14/97 before me, Peggy S. Pepitone personally appeared Dan D. Christensen personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal


SIGNATURE OF NOTARY

REISSUE PATENT APPLICATION
Docket No. 06005/34687A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Reissue Application of:) "EXPRESS MAIL" mailing label No.
Krivoshein et al.) **EL564457123US**
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U.S. Patent No. 5,980,078) I hereby certify that this paper and all
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For: PROCESS CONTROL SYSTEM) "EXPRESS MAIL POST OFFICE TO
) INCLUDING AUTOMATIC) ADDRESSEE" service under 37 C.F.R.
) SENSING AND AUTOMATIC) §1.10 addressed to: Commissioner for
) CONFIGURATION OF DEVICES) Patents, Washington, D.C. 20231 on
) this date:
)
Filed: Herewith)
)
Group Art Unit: Unknown) Date: November 9, 2001
)
Examiner: Unknown)
)
Richard Zimmermann

REISSUE DECLARATION

Commissioner for Patents
Washington, DC 20231

Sir:

1. We, Ken D. Krivoshein and Dan D. Christensen (hereinafter "Inventors"), hereby declare that our residence, post office addresses and citizenship are as stated below after our names. We believe that we are the original, first and joint inventors of the subject matter which is described and claimed in U.S. Patent No. 5,980,078 (hereinafter the "'078 patent"), issued November 9, 1999, and for which invention we now solicit a reissue patent. The application that matured into the '078 patent was filed on February 14, 1997.

2. We have assigned the entire right, title and interest in and to the '078 patent to Fisher-Rosemount Systems, Inc. as evidenced by the assignment recorded in the U.S. Patent and Trademark Office on February 14, 1997, at Reel 8488, Frame 0037. We believe that we have the right to make this declaration in accordance with 37 CFR §1.172(a) inasmuch as the referenced accompanying reissue application seeks to clarify the scope of the claims of the

‘078 patent.

3. We hereby state that we have reviewed and understand the contents of the ‘078 patent, including the claims.

4. We believe the ‘078 patent to be partly inoperative or invalid by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent.

5. Specifically, we believe the ‘078 patent to be partly inoperative or invalid, by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent because claims 1, 2, 3 and 22 contain language which may be construed to read on the Foundation™ Fieldbus Specification, as promulgated in 1994-1996, and therefore may exclude others from practicing at least a portion of the Foundation™ Fieldbus Specification. Claims 1, 2, 3 and 22 contain the language “placing the connected device in an accessible state for communicating with a user interface.” The use of the term “accessible state” in claims 1, 2, 3 and 22 may be construed, in light of the Foundation™ Fieldbus Specification, to mean one or more previously known device states which allow a user to access the device, including for example a commissioned state. As written, the language of claims 1, 2, 3 and 22 referring to “accessible state” was intended to refer to a new “standby state” only and not to all states which may be construed as being “accessible” under the Foundation™ Fieldbus Specification, such as the commissioned state described by the Foundation™ Fieldbus Specification. As amended, the language of claims 1, 2, 3, and 22 refers to a “standby state for communicating with a user” and the language of claims 1, 2, and 3 indicate that the communication occurs “prior to commissioning the connected device into a predefined control configuration” and thereby defines the standby state as one in which the device is connected to the network and accessible to a user prior to the device being put into a commissioned state.

6. Further, with respect to claims 4, 5 and 6, we believe the ‘078 patent to be partly inoperative or invalid by reason of the patentees claiming more than the patentees had the right to claim in the ‘078 patent because claims 4, 5, and 6 contain language which may

be construed to read on the Foundation™ Fieldbus Specification and therefore exclude others from practicing at least a portion of the Foundation™ Fieldbus Specification. The use of the phrase “distributed controller” in claims 4, 5 and 6 may be construed, in light of the Foundation™ Fieldbus Specification, to mean a controller having any type of control logic for performing the specified activities. Claims 4, 5 and 6, however, should refer to a distributed controller having “standby control logic” for sensing a device, supplying initial interconnect information to the device, uploading configuration parameters, and configuring or commissioning the device. Therefore, amending claims 4, 5 and 6 to include “the distributed controller having standby control logic including:” is more closely aligned with the intended scope and meaning of the claims, and cannot to be construed as reading on the Foundation™ Fieldbus Specification.

7. The errors occurred during the prosecution of the application that matured into the ‘078 patent. The above-mentioned errors resulted in our claiming more than the patentees had the right to claim in the ‘078 patent.

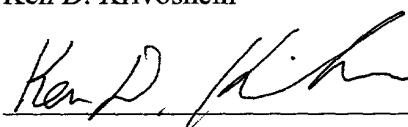
8. The errors occurred because, at the time that the ‘078 patent was prepared, prosecuted and ultimately issued, we did not have a complete understanding of the scope and meaning of language contained in the claims. This was because we were not aware of the possible broad scope of the term “accessible state” as it related to the states defined or described in the Foundation™ Fieldbus Specification.

9. The errors in claiming were first discovered in or around March 2001, when the Fieldbus Foundation informed the assignee that the ‘078 patent claims may be too broad and may prevent practicing certain portions of the Foundation™ Fieldbus Specification. A subsequent assessment of the prior art by the assignee and the Foundation™ Fieldbus over a period of time was made. It was after this time that we were convinced that claims 1-6, and 22 may be construed to cover multiple states under the umbrella term of “accessible state,” and are therefore too broad in view of the Foundation™ Fieldbus Specification. Had we known before the ‘078 patent issued that we claimed more than we had a right to claim, we would have amended the claims accordingly.

10. Every error which is to be corrected in the present reissue application arose without any deceptive intention on our part.

11. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this reissue application or any reissue patent issued thereon.

Name of First Joint Inventor: Ken D. Krivoshein

First Inventor's Signature: 

Date: November 8, 2001

Country of Citizenship: United States of America

Residence and Post Office Address: 183 Elgin Woods Lane
Elgin, Texas 78621

Name of Second Joint Inventor: Dan D. Christensen

Second Inventor's Signature: 

Date: November 8, 2001

Country of Citizenship: United States of America

Residence and Post Office Address: 9001 Marthas Drive
Austin, Texas 78717